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ECONOMIC COMMISSION FOR EUROPE

**WORLD HEALTH ORGANIZATION
REGIONAL OFFICE FOR EUROPE**

**MEETING OF THE PARTIES TO THE CONVENTION
ON THE PROTECTION AND USE OF TRANSBOUNDARY
WATERCOURSES AND INTERNATIONAL LAKES
and
MEETING OF THE SIGNATORIES TO THE PROTOCOL
ON WATER AND HEALTH TO THE CONVENTION**

Working Group on Water and Health

Fourth meeting
Geneva, 9-10 December 2004

**ESTABLISHING A COMPLIANCE PROCEDURE
UNDER THE PROTOCOL ON WATER AND HEALTH ***

Prepared by the secretariat with the assistance of Mr. Attila TANZI (Italy)
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Chairperson and Vice-Chairperson of the Legal Board

1. The Working Group on Water and Health at its third meeting (Budapest, 11-12 March 2004) entrusted the Legal Board with the preparation of legal documents for the first meeting of the Parties to the Protocol on Water and Health.

* Late submission due to consultations with the secretaries of the other UNECE Environmental Conventions on issues brought forward in paragraphs 3 and 5.

2. The draft compliance procedure under the Protocol on Water and Health is based on the outcome of the first and second meetings of the Legal Board (Verona, Italy, 28-29 June 2004 and Geneva, 16-17 September 2004).
3. The Working Group may wish to examine the present draft compliance procedure and provide its advise to the Legal Board, particularly on the following issues:
 - (a) The procedure of proposing and deciding upon candidates (annex, para.5);
 - (c) The possible participation for two NGOs in the meetings of the Committees (annex, para.7);
 - (d) The consideration of communications from the public (annex, chapter VI and related paragraphs);
 - (e) The information considered by the Committee (annex, paras. 23 and 33);
 - (f) The measures to promote compliance and address cases of non-compliance (annex, chapter XI), particularly with regard to:
 - (i) The text passage “which may include assistance in seeking support from specialized agencies and other competent bodies, as appropriate” (annex, para. 34 (a), which could lead to overlapping of responsibility with the existing body - the Working Group on Water and Health - and the proposed Working Group to follow up the outcome of the Oslo Roundtable on Water and Health in Europe (see MP.WAT/WG.4/2004/8);
 - (ii) The text under paragraph 35 (f) in the annex, which is already regulated by applicable international law.
4. On these and other issues, reference can be made to the reports of the first and second meetings of the Legal Board (MP.WAT/AC.4/2004/2 and MP.WAT/AC.4/2004/6).
5. The Working Group should also consider the resources implications related to the establishment of the compliance procedure.

DRAFT DECISION

REVIEW OF COMPLIANCE

As prepared by the Legal Board at its second meeting

The Meeting of the Parties,

Determined to promote and improve compliance with the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, and recalling its article 15,

Recognizing the necessity for rigorous reporting by the Parties on their compliance with the Protocol,

Seeking to promote the identification, as early as possible, of compliance difficulties encountered by Parties and the adoption of the most appropriate and effective solutions for resolving those difficulties,

Taking note of the rules of procedures for the Meeting of the Parties to the Protocol relevant to the operation of the Compliance Committee, in particular rule 21,

1. Establishes the Compliance Committee for the review of compliance by the Parties with their obligations under the Protocol.
2. Decides that the structure and functions of the Compliance Committee and the compliance procedure shall be those set out in the annex to this decision.
3. Encourages Parties to bring issues concerning their own compliance before the Committee.

Annex

DRAFT COMPLIANCE PROCEDURE

I. OBJECTIVE, NATURE AND PRINCIPLES

1. The objective of this compliance procedure is to facilitate, promote and aim to secure compliance with the obligations under the Protocol, with a view to preventing disputes, by:
 - (a) Addressing cases of non-compliance by Parties; and
 - (b) Providing advice or assistance to Parties, where appropriate.
2. The compliance procedure shall be simple, facilitative, non-adversarial and cooperative in nature and its operation shall be guided by the principles of transparency, fairness, expedition and predictability.
3. The compliance procedure shall be conducted bearing in mind the interests of the Party facing difficulties, of the Parties as a whole and of populations potentially or actually adversely affected by non-compliance.

II. STRUCTURE OF THE COMPLIANCE COMMITTEE

4. The Compliance Committee shall consist of nine members, who shall serve in their personal capacity and objectively in the best interests of the Protocol.
5. The members shall be persons of high moral character and have recognized expertise in the fields to which the Protocol relates, including legal and/or technical expertise. They shall be elected by the Meeting of the Parties to the Protocol from among candidates proposed by the Parties [and from up to three candidates proposed by non-governmental organizations (NGOs) enjoying observer status before the Meeting of the Parties to the Protocol].
6. In the election of the Committee, consideration should be given to the geographical distribution of membership and the diversity of experience. At their first meeting, the Parties shall elect five members for a full term of office and four members for a half term of office. Subsequently, the Meeting of the Parties shall elect for a full term new members to replace those whose term has expired. If a member of the Committee can no longer perform his or her duties as member of the Committee for any reason, the Bureau of the Meeting of the Parties shall appoint another member fulfilling the criteria in this chapter to serve for the remainder of the term, subject to the approval of the Committee. A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. Members shall not serve for more than two consecutive terms.
7. [Two non-governmental organizations promoting the objectives of the Protocol and enjoying observer status before the Meeting of the Parties shall be entitled to participate in the

meetings of the Committee as observers, without the right to vote. The Meeting of the Parties shall designate these two organizations at each ordinary meeting following the indications of NGOs enjoying observer status before it.]

8. The Committee shall elect its own Chairperson and Vice-Chairperson and approve its rules of procedure.

9. The Committee shall, unless it decides otherwise, meet at least once a year. The joint secretariat shall arrange for and service the meetings of the Committee.

10. The Committee shall make every effort to adopt its decisions and recommendations by consensus, that is the absence of any formal objection. If all efforts at consensus have been exhausted, and no agreement reached, decisions and recommendations shall be adopted by a two-thirds majority of the members present and voting or by five members, whichever is the greater.

III. FUNCTIONS OF THE COMMITTEE

11. The Committee shall:

(a) Consider any submission, referral [or communication] relating to specific issues of compliance made in accordance with paragraphs 13 to [15][22] below;

(b) Prepare, at the request of the Meeting of the Parties, a report on compliance with or implementation of specific provisions of the Protocol; and

(c) Monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 7, paragraph 5, of the Protocol.

12. The Committee may examine compliance issues and make recommendations or take measures if and as appropriate.

IV. SUBMISSIONS BY PARTIES

13. A submission may be brought before the Committee by a Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Protocol. Such a submission shall be addressed in writing to the joint secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The joint secretariat shall transmit the submission to the Committee, which shall consider the matter as soon as practicable.

14. A submission may be brought before the Committee by one or more Parties that have reservations about another Party's compliance with its obligations under the Protocol. Such a submission shall be addressed in writing to the joint secretariat and supported by

corroborating information. The joint secretariat shall, within two weeks of receiving a submission, send a copy of it to the Party whose compliance is at issue. Any reply and supporting information shall be submitted to the joint secretariat and to the Parties involved within three months or such longer period as the circumstances of a particular case may require but in no case later than six months. The joint secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as practicable.

V. REFERRALS BY THE JOINT SECRETARIAT

15. Where the joint secretariat, [in particular] upon considering the reports submitted in accordance with the Protocol's reporting requirements, becomes aware of possible non-compliance by a Party with its obligations under the Protocol, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months, or such longer period as the circumstances of the matter may require but in no case later than six months, the joint secretariat shall bring the matter to the attention of the Committee, which shall consider the matter as soon as practicable.

[VI. COMMUNICATIONS FROM THE PUBLIC

16. Communications may be brought before the Committee by one or more members of the public concerning a Party's compliance with the Protocol.

17. The communications referred to in paragraph 16 shall be addressed to the Committee through the joint secretariat in writing and may be in electronic form. The communications shall be supported by corroborating information.

18. The Committee shall consider any such communication unless it determines that the communication is:

- (a) Anonymous;
- (b) An abuse of the right to make such communications;
- (c) Manifestly unreasonable;
- (d) Incompatible with the provisions of this compliance procedure or with the Protocol.

19. The Committee should, at all relevant stages, take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress.

20. Subject to the provisions of paragraph 18, the Committee shall as soon as possible bring any communications submitted to it under paragraph 16 to the attention of the Party alleged to be in non-compliance.

21. A Party shall, as soon as possible but not later than five months after any communication is brought to its attention by the Committee, submit to the Committee written explanations or statements clarifying the matter and describing any response that it may have made.

22. The Committee shall, as soon as practicable, further consider communications submitted to it pursuant to this chapter and take into account all relevant written information made available to it, and may hold hearings.]

VII. INFORMATION GATHERING

23. In order to perform its functions, the Committee [shall consider any relevant information submitted to it and] may:

- (a) Request further information on matters under its consideration;
- (b) Undertake, with the consent of any Party concerned, information gathering in the territory of that Party;
- [(c) Consider any relevant information submitted to it;] and
- (d) Seek the services of experts and advisers as appropriate.

VIII. CONFIDENTIALITY

24. Save as otherwise provided for in this chapter, no information held by the Committee shall be kept confidential.

25. The Committee and any person involved in its work shall ensure the confidentiality of any information that falls within the scope of the exceptions provided for in article 10, paragraphs 4 (c) and 5, of the Protocol and that has been provided in confidence.

26. The Committee and any person involved in its work shall ensure the confidentiality of information that has been provided to it in confidence by a Party when making a submission in respect of its own compliance in accordance with paragraph 13 above.

27. All information that may disclose the identity of the member of the public submitting the information or of a third person shall be kept confidential if submitted by a person who asks that it be kept confidential, unless the Committee considers that there are no reasonable

grounds to believe that a member of the public may be penalized, persecuted or harassed because of the communication.

28. If necessary to ensure the confidentiality of information in any of the above cases, the Committee shall hold meetings in private.

29. Committee reports shall not contain any information that the Committee must keep confidential under paragraphs 25 to 27 above. Information that the Committee must keep confidential under paragraph 25 shall not be made available to any Party. All other information that the Committee receives in confidence and that is related to any recommendations by the Committee to the Meeting of the Parties shall be made available to any Party upon its request; that Party shall ensure the confidentiality of the information that it has received in confidence.

IX. ENTITLEMENT TO PARTICIPATE*

30. A Party in respect of which a submission, referral [or communication] is made or which makes a submission[, as well as the member of the public making a communication,] shall be entitled to participate in the discussions of the Committee with respect to that submission, referral [or communication].

31. Only the members of the Committee shall take part in the preparation and adoption of any findings, any measures or any recommendations.

32. The Committee shall send a copy of its draft findings, draft measures and any draft recommendations to the Party in respect of which a submission, referral [or communication] is made, the Party which makes a submission [and the member of the public who submitted the communication if applicable], and shall take into account any comments made by them in the finalization of those findings, measures and recommendations.

X. COMMITTEE REPORTS TO THE MEETING OF THE PARTIES TO THE PROTOCOL

33. The Committee shall report on its activities at each ordinary meeting of the Parties and make such recommendations as it considers appropriate, including recommendations on the measures referred to in paragraph 35. [The Committee shall list the information that it has received and shall provide the reasoning for its recommendations and decisions.] Each report shall be finalized by the Committee not later than twelve weeks in advance of the meeting of the Parties at which it is to be considered. Committee reports shall be made available to the public.

* The wording of paragraphs 30 and 31 should be reviewed if it is decided to establish a Committee made up of Parties.

**XI. MEASURES TO PROMOTE COMPLIANCE AND
ADDRESS CASES OF NON-COMPLIANCE**

34. The Committee may decide upon one or more of the following measures:

(a) Provide advice and facilitate assistance to individual Parties regarding their compliance with the Protocol, which may include assistance in seeking support from specialized agencies and other competent bodies, as appropriate;

(b) Request or assist, as appropriate, the Party concerned to develop an action plan to achieve compliance with the Protocol within a time frame to be agreed upon by the Committee and the Party concerned;

(c) Invite the Party concerned to submit progress reports to the Committee on the efforts that it is making to comply with its obligations under the Protocol; [and]

(d) Issue cautions [; and

(e) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public].

35. Upon consideration of the report and any recommendations of the Committee, the Meeting of the Parties to the Protocol may, depending on the particular question before it and taking into account the cause, type, degree and frequency of the non-compliance, decide upon one or more of the following measures:

(a) Take measures referred to in paragraph 34;

(b) Recommend to Parties to provide financial and technical assistance, training and other capacity-building measures and facilitate technology transfer;

(c) Provide financial and technical assistance, training and other capacity-building measures, subject to financial approval, including when appropriate seeking support from specialized agencies and other competent bodies;

(d) Issue declarations of non-compliance;

(e) Give special publicity to cases of non-compliance;

(f) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Protocol; or

(g) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

XII. RELATIONSHIP BETWEEN SETTLEMENT OF DISPUTES AND THE COMPLIANCE PROCEDURE

36. This compliance procedure shall be without prejudice to article 20 of the Protocol on the settlement of disputes.

XIII. ENHANCEMENT OF SYNERGIES

37. In order to enhance synergies between this compliance procedure and compliance procedures under other agreements, the Meeting of the Parties to the Protocol may request the Compliance Committee to communicate as appropriate with the relevant bodies of those agreements and report back to it, including with recommendations as appropriate. The Compliance Committee may also submit a report to the Meeting of the Parties to the Protocol on relevant developments between the sessions of the Meeting of the Parties to the Protocol.

38. The Committee may transmit information to the secretariats of other international environmental agreements for consideration in accordance with their applicable procedures on compliance. The Committee may invite members of other compliance committees dealing with issues related to those before it for consultation.